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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Global Forum on Competition**

**ROUNDTABLE ON BRINGING COMPETITION INTO REGULATED SECTORS**

**Contribution from Vietnam**

-- Session I --

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## **BRINGING COMPETITION INTO REGULATED SECTORS IN VIETNAM**

### **1. Introduction**

1. Vietnam economy for so many years has been best described as having highly concentrated industries dominated by large state-owned enterprises which supported inefficient firms, operating in markets insulated by various types of barriers and distorted by numerous regulations. Various forms of inadequate government policies have led to market distortion. The business opportunities created did not enable all the society to participate in the development of various economic sectors. The development of the private sectors has in fact been mainly the result of unfair business competition conditions. The emergence of conglomerates and a group of strong businessmen that were not supported by the spirit of true entrepreneurship has one of the factors, which cause economic resilience to become extremely vulnerable and uncompetitiveness.

2. The above mentioned situations and conditions have forced Vietnam to renovate (doi moi) and rearrange its business activities so that the business activities can grow and develop in a fair, rational and appropriate way. So it can create and maintain a healthy business competition climate and avoid concentration of economic power on one certain person or group, which are contradictory to the ideals of social justice.

3. Competition policy and law is directly relevant to the main elements of market-oriented economic reforms undertaken in Vietnam during 10 years. Domestic reforms (e.g. trade and price liberalisation; deregulation, including state-controlled monopolies such as utilities and “network industries”; privatisation of previously state-owned enterprises; and reforms of foreign direct investment legislation) need to be accompanied by the introduction and implementation of effective competition law and policy.

4. The network monopolies, such as: electricity grids, railway, basic telecommunications operators) need to be guided by competition principles to ensure that they do not abuse their dominant power with respect to end users. In Vietnam, sectoral regulators are created to supervise the operations of the network operators and are given competition responsibilities that they may share with the competition Authority.

5. Despite significant progress being made by Vietnam Government in adopting competition regulations, there is a relative knowledge gap in these sectoral regulators regarding the specific impact of competition policy on development. Key concerns have been raised by Government of Vietnam as to whether competition will damage international competitiveness, raise unemployment, or hamper social policies.

### **2. The regulations system related to competition law**

6. The decision to adopt a competition law, or promote the adoption of a competition law, as an element of economic development raises a number of issues about the approach to law reform in transition environments and the possible contributions of competition policy to economic progress.

7. The ten-year Socio-economic development Strategy for 2001-2010 (SEDS) endorsed by the 9<sup>th</sup> Party Congress and by the National Assembly - includes a commitment to creating a level playing field for all enterprises regardless of ownership, and to completely opening the economy to global competition over the coming decade. The Government’s Comprehensive Poverty Reduction and growth Strategy (CPRGS, May 2002) focus on: (i) creating a legal environment that support fair and competitive business; (ii)

maintaining macroeconomic stability, and; (iii) creating a social environment that provides social environment that provides social equality, enhanced grassroots democracy and legal support for the poor.

8. The Socio-Economic Development Strategy (2001-2010) has identified the task to:

- "To renew and complete the legal framework work, dismantle all obstacles in terms of mechanism, policy and administrative procedure with a view to maximizing all resources, generating a new impetus for the development of production and business by all economic sectors with different forms of ownership. All enterprises and citizens are entitled to invest in businesses in the forms stipulated by laws and to be protected by the law. All business organisations in different or mixed forms of ownership are encouraged to develop on a long-term basis, cooperate and compete equally, and constitute an important integral part of the socialist-oriented market economy. To develop vigorously small and medium enterprises; step by step set up a number of powerful economic groups".
- "To establish in a synchronised manner and continue developing and completing different kinds of market in parallel with the formation of a legal and institutional framework, for the market to operate dynamically, efficiently and orderly in a healthy, open and transparent environment restrictive to and controlling over business monopoly. To adopt effective measures to fight smuggling and trade fraud".

### **2.1 Telecommunications sector**

9. On May 25, 2002, the Standing Committee of the National Assembly approved the introduction of *Ordinance 43*<sup>1</sup> (the "Post and Telecommunications Ordinance") to replace the outdated Decree No.109.<sup>2</sup> This milestone Ordinance provides a more transparent regulatory regime for private and public networks, dealing with issues such as interconnection<sup>3</sup>, fees, charges and licensing, and introducing a Universal Service Fund.

10. The Ordinance is a detailed legislative instrument governing telecommunications. It sets out provisions concerning:

- consumer rights (including confidentiality and privacy);
- providers;
- licensing;
- network/services reservations;
- competition (such as through the application of dominant operator obligations);
- interconnection;
- pricing (retail and wholesale);
- access to land and structures;
- standards of quality;
- universal service;

- dispute resolution and compensation;
- radio frequency planning and licensing;
- telecom numbering and Internet resource planning.

11. According to the Industry Development Strategy to 2010 and Orientation to 2020, the development target is to reach a minimum teledensity of 25 telephones per 100 people (on average every household then has a telephone). The national telephone network could cover all areas of the country with high capacity, high speed, high quality, modern and diversified services at fair prices.

12. Key policy priorities are stated as follows:

- develop and improve the legal framework to move from a monopoly to a competitive environment;
- develop and issue a market liberalisation roadmap for particular services with certain timing in order to create conditions for enterprises to enter the market;
- market expansion through encouraging licensed operators to enter the market to stimulate competition;
- develop tariff regulations toward a cost-based approach and ensure universality;
- develop an open resale market;
- capital mobilisation initiatives include identifying domestic sources, reserve funds of operators; from staff of enterprises; from different governmental levels; and from different citizens. International sources of capital could be through ODA, BCC, JV, BOT, issuing of international bonds; lending from banks, financial institutions and foreign companies;
- encourage equitisation in the state-owned telecommunication enterprises, except the national backbone network;
- develop policies and regulations related to interconnection, USO, and investment in remote and rural areas;
- develop and issue a transparent licensing policy with simple procedures to create favourable conditions for new entrants;
- issue licenses to other operators in different service areas: ISP, IAP, long distance and international.

## **2.2 Competition and Monopoly Pricing**

13. *Ordinance 40-2002-PL-UBTVQH10 of the National Assembly dated 26 April 2002* codifies and consolidates a number of items of legislation on prices and price controls, effective as of 1 July 2002. Detailed regulations on pricing were issued under *Decree 170-2003-ND-CP of the Government dated 25 December 2003* and became effective as of 14 January 2004. Applicable to all foreign and domestic organisations and individuals engaged in production or business activities in Vietnam ("businesses"). *Ordinance 40* provides for:

- state management of the stability of market prices of important and essential goods and services (prescribed in *Decree 170* as including petrol, oil, liquefied gas, cement, iron, steel, rice, coffee, cotton, sugar cane, salt, and certain kinds of medication);
- determination by the State of prices of land, water surfaces and important natural resources, State owned assets to be sold or leased out, goods or services subject to monopoly (including electricity, transportation and post and telecom services), and goods and services important for national welfare and people's livelihood (including petrol, treated water, basic medicines, bus transportation and subsidized commodities);
- evaluation of prices of State owned assets;
- control of monopoly prices (defined as the price of goods or services fixed by any one seller or purchaser organisation or individual in the market, or the price of goods or services of multiple organisations and individuals co-operating in a monopoly, holding a major share of the market and having the power to dominate market prices);
- control of price monopoly co-operation (price-fixing);
- Prohibition on dumping;
- other prohibitions on businesses with respect to pricing.

14. *Decree 170* limits the definition of "price monopoly co-operation" to price-fixing agreements between businesses aimed at dominating the market *exceeding the market share stipulated by law* (italicised words do not appear in *Ordinance 40*). But the new regulations do not stipulate the relevant market share. Of note, the price-fixing provisions of the current draft of the Law on Competition prescribe a market share threshold of 30%. *Decree 170* expressly prohibits the following conduct deemed to be price monopoly co-operation:

- agreement between businesses to fix prices, control prices, change prices for sale of goods and services aimed at restraining competition, infringing the legal interests of other businesses or of consumers;
- sudden sale of one (identical or similar) type of goods or services at one uniform price by several businesses at one particular point of time;
- agreement between businesses to create scarcity of goods by way of limiting production, distribution, transportation, sale of goods or supply of services; destructing or damaging goods; or taking advantage to speculate and increase prices;
- agreement between businesses to apply conditions of sale or purchase of goods and supply of after-sale services which affect prices of goods and services;
- agreement between businesses to change prices of sale and purchase of goods and services in order to eliminate or force other enterprises to co-operate with them or become their affiliates.

15. Implementing *Decree 170*, *Circular 15-2004-TT-BTC of the Ministry of Finance dated 9 March 2004* provides detailed guidelines on regulation of petrol, oil, liquefied gas, cement, iron, steel, rice, coffee, cotton, sugarcane, salt and some medications (effective as of 6 April 2004). Of note, *Circular 15* prescribes

the circumstances in which prices will be deemed to have "abnormally fluctuated", for the purposes of State management of stability of market prices.

16. Under the *Decree 169-2004-ND-CP of the Government dated 22 September 2004 on Dealing with Administrative Offences in Pricing Sector*, any domestic or foreign organisation or individual engaged in production or business activities in Vietnam and breaching the provisions on price stabilisation will be subject to a VND5-10 million fine.

17. The price-fixing provisions of *Ordinance 40* and *Decree 170* lay foundations for the *Law on Competition*.

- A law on Competition has been passed by the National Assembly of Vietnam in November 9, 2004 and come into enforced by July 1, 2005.

### 2.3 *Electricity sector*

- A law on Electricity has also passed the National Assembly of Vietnam in November 9, 2004 and come into enforced by July 1, 2005, at the same time of Competition law.

18. The Electricity law is a detailed legislative instrument governing electricity sector. It sets out provisions concerning:

#### 2.3.1 *Scope of application*

19. This Law provides regulations on the electric power sector planning and investment; electricity savings; power market; the rights and obligations of organisations and individuals participating in electricity activities and usage; protection of electrical equipment, electricity works and power safety.

#### 2.3.2 *Objects of application*

20. This Law shall apply to organisations and individuals who engage in electricity activities and usage or other activities related to electricity in Viet Nam. In case of otherwise stipulated by an Intenational treaty, to which the Socialist Republic of Viet Nam has signed or acceded, the regulations specified in the treaty would prevail.

#### 2.3.3 *Principle of activities of an electric power market*

- ensure the transparency, equality, healthy competition and non-discrimination between (electric) power market's participants;
- respect right of freedom to select partners and forms of transactions of the market's participants, in conformity with levels of development of the power market;
- the Government that regulates the power market activities to ensure sustainable power system development, satisfying the requirements to supply electricity in a secure, stable and effective fashion.

#### 2.3.4 *Formation and development of power market*

Power market is formed and developed under the sequent levels as follows:

- Competitive power generation market;

- Competitive power bulk market;
- Competitive power retail market.

21. The Prime Minister shall define the road map, pre-conditions to form and develop levels of the power market.

#### 2.3.5 *State management of electricity activities and usage*

22. The Ministry of Industry shall be responsible to the Government for conducting functions of state management of electricity activities and usage.

#### 2.3.6 *Contents of electricity regulation*

1. develop regulations on operation of a competitive power market and directions for implementation;
2. research and recommend measures to regulate power supply-demand relationship and manage the realisation of power supply-demand balance;
3. issue, modify, amend, and revoke electricity activity license as prescribed in Article 38 of this Law;
4. specify conditions and procedures for interruption or deduction of electricity consumption; conditions and procedures for connection to the national power grid;
5. research and develop retail electricity tariffs and implement electricity tariff regimes and policies;
6. conduct consultations with relevant organisations and agencies on the retail electricity tariff;
7. approve and adjust bulk power sale tariffs; approve transmission charges, distribution charge and others according to Government's regulation.

### **3. Conclusion**

23. As the regulatory reform are being implemented on the spirit of “doi moi” process, the industry regulating authorities should consistently follow the principles of creating a fair competition environment, non-discrimination among different economic classes during the process of making policy and reform in their own industry.

24. The Government's role should be focused on rule of laws ensuring a level playing field, macroeconomic coordination, environmental protection, fair competition and controlling monopolies or oligopolies, etc and not on favouritism and protection of state-owned corporation. The investment and business environment should be improved; costs to make business in terms of time and money should be reduced to the regional level. The Primer Minister of Vietnam has emphasized on many occasions over the past five years that strengthening the economy's competitiveness is a top priority for the nation, and the Competition Law, backed by an independent authority, will contribute to Vietnam’s ability to participate in the global economy.

25. The legal framework has provided some general guidance on competition, which needs to be concretised and implemented on several aspects. The rights of the consumers have to be clearly identified and an agency has to look after these rights. Duties and responsibilities of the monopoly have to be clearly and concretely elaborated. Sanctions for abusing of its monopolistic position must be formulated and endorsed. A powerful anti-monopoly agency must act in order to avoid abusing of the predominant position. Transparency on the decision process must be provided.

26. Independent Auditing must be implemented annually. Transparency and Openness must be observed in all regulations.

**NOTES**

1. Ordinance 43/2002/PL-UBTVQH10 on Post and Telecommunications.
2. Decree No. 109/1997/ND-CP on Posts and Telecommunications.
3. Note however that the provisions of the Ordinance do not provide a mechanism for guaranteeing interconnection.